LIM WAH SIANG

v.

PERWIRA AFFIN BANK BHD.

COURT OF APPEAL, KUALA LUMPUR
MAHADEV SHANKAR JCA
ABU MANSOR ALI JCA
ABDUL MALEK AHMAD JCA
[CIVIL APPEAL NO: M-02-18 OF 1995]
14 NOVEMBER 1996

BANKING & FINANCE: *Attestation of documents - Signature on document attested by an undischarged bankrupt - Legal effect.*

The respondent Bank had given some credit facilities to the first defendant below. Upon default of payment thereof, the respondent applied for and obtained summary judgment *inter alia* against the appellant, who was one of the guarantors of the facilities. The appellant appealed against the judgment, and argued before the appeal Court that the judgment had been vitiated by the fact that his signature on the debentures was attested by an undischarged bankrupt.

Held:

Per Abu Mansor Ali JCA (delivering the judgment of the Court):

[1] The point raised was devoid of any merit. No provision of the law was pointed to us which forbids an undischarged bankrupt from witnessing a signature. We see no reason to disturb the finding of the learned Judicial Commissioner and therefore dismiss the appeal.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

PERBANKAN & KEWANGAN: *Pengakusaksian dokumen-dokumen - Tandatangan pada dokumen diakusaksi oleh seorang bankrap yang belum dilepaskan - Kesan undang-undang.*

Bank responden telah memberikan kemudahan kredit kepada defendan pertama di Mahkamah di bawah. Setelah berlaku kemungkiran pembayaran, responden telah memohon untuk mendapatkan dan memperolehi penghakiman terus, antara lain terhadap perayu, yang merupakan seorang penggerenti kemudahan itu. Perayu telah merayu terhadap penghakiman itu, dan berhujah di hadapan Mahkamah rayuan bahawa penghakiman telah menjadi tak sah oleh fakta bahawa tandatangannya pada debentur-debentur telah diakusaki oleh seorang bankrap yang masih belum dilepaskan.

Diputuskan:

Oleh Abu Mansor Ali HMR (menyampaikan penghakiman Mahkamah):

[1] Perkara yang dibangkitkan tidak mempunyai merit. Tidak terdapat peruntukan undang-undang yang telah ditunjukkan kepada kami yang mana melarang seorang bankrap yang tidak dilepaskan daripada menyaksikan sesuatu tandatangan. Kami tidak melihat apa-apa alasan bagi mengganggu pendapat Pesuruhjaya Kehakiman yang bijaksana dan dengan itu menolak rayuan ini.

[Rayuan ditolak.]

Legislation referred to:
Rules of the High Court 1980, O. 14

[Appeal from High Court Melaka; Civil Suit No: 22-85-1992]

For the appellant - Felix Sennyah; M/s. Bashir & Co.
For the respondent - Phang Weei Min; M/s. Andrew T.S. Goh & Co.

JUDGMENT

Abu Mansor Ali JCA:

This is an appeal against the decision of this Court given on 19 August 1996.

The respondent was plaintiff in the Court below (hereinafter called 'the plaintiff'). The plaintiff had given the 1st defendant overdraft and credit facilities for RM80,000 on 6 September 1985 with interest until 25 June 1991, the debt totalled RM1.1 million. As consideration for those facilities the 2nd, 3rd and 4th defendants agreed to be guarantors pursuant to the guarantee agreement dated 14 June 1991.

When the 1st defendant failed to satisfactorily service the loan facilities, the plaintiff sued and obtained judgment against all the defendants. This appeal has been filed by the 3rd defendant only.

The main ground of complaint by the 3rd defendant was that the plaintiff obtained judgment against him under O. 14 of the Rules of the High Court 1980, inspite of his signatures on the debentures dated 14 June 1991 and 25 June 1991 being attested by a director, Ng Sah Tong, who, since 5 December 1990, was an undischarged bankrupt. The learned Judicial Commissioner gave judgment for the plaintiff inspite of the 3rd defendant's objection.

Before us the appellant's Counsel took the same point. We found the point was devoid of any merit especially since Counsel was unable to point to any

provision of the law where the 3rd defendant could not sign in the circumstances he did. No provision of the law was pointed to us which forbids an undischarged bankrupt from witnessing a signature. We found the 3rd defendant did sign and became a guarantor. We see no reason why we should disturb the judgment of the learned Judicial Commissioner and we dismissed the appeal.

Reported by W.A. Sharif